

IN THE SENATE

SENATE BILL NO. 1017, As Amended

BY EDUCATION COMMITTEE

AN ACT

RELATING TO ATTENDANCE AT SCHOOLS; AMENDING SECTION 16-1602, IDAHO CODE, TO FURTHER DEFINE A TERM; AMENDING SECTION 33-202, IDAHO CODE, TO REVISE A PROVISION RELATING TO SCHOOL ATTENDANCE REQUIREMENTS; AND AMENDING SECTION 33-207, IDAHO CODE, TO REVISE A PROVISION RELATING TO PROCEEDINGS AGAINST PARENTS OR GUARDIANS AND TO PROVIDE A CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 16-1602, Idaho Code, be, and the same is hereby amended to read as follows:

16-1602. DEFINITIONS. For purposes of this chapter:

(1) "Abused" means any case in which a child has been the victim of:

(a) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

(b) Sexual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.

(2) "Abandoned" means the failure of the parent to maintain a normal parental relationship with his child including, but not limited to, reasonable support or regular personal contact. Failure to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment.

(3) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(4) "Adjudicatory hearing" means a hearing to determine:

(a) Whether the child comes under the jurisdiction of the court pursuant to the provisions of this chapter;

(b) Whether continuation of the child in the home would be contrary to the child's welfare and whether the best interests of the child require protective supervision or vesting legal custody of the child in an authorized agency;

(c) Whether aggravated circumstances as defined in section 16-1619, Idaho Code, exist.

(5) "Authorized agency" means the department, a local agency, a person, an organization, corporation, benevolent society or association licensed or approved by the department or the court to receive children for control, care, maintenance or placement.

(6) "Case plan hearing" means a hearing to:

(a) Review, approve, modify or reject the case plan; and

(b) Review reasonable efforts being made to rehabilitate the family; and

(c) Review reasonable efforts being made to reunify the children with a parent or guardian.

(7) "Child" means an individual who is under the age of eighteen (18) years.

(8) "Circumstances of the child" includes, but is not limited to, the joint legal custody or joint physical custody of the child.

(9) "Commit" means to transfer legal and physical custody.

(10) "Concurrent planning" means a planning model that prepares for and implements different outcomes at the same time.

(11) "Court" means district court or magistrate's division thereof, or if the context requires, a magistrate or judge thereof.

(12) "Custodian" means a person, other than a parent or legal guardian, to whom legal or joint legal custody of the child has been given by court order.

(13) "Department" means the department of health and welfare and its authorized representatives.

(14) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activity of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(15) "Family or household member" shall have the same meaning as in section 39-6303(6), Idaho Code.

(16) "Foster care" means twenty-four (24) hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility.

(17) "Grant administrator" means the supreme court or any organization or agency as may be designated by the supreme court in accordance with such procedures as may be adopted by the supreme court. The grant administrator shall administer funds from the guardian ad litem account in accordance with the provisions of this chapter.

(18) "Guardian ad litem" means a person appointed by the court pursuant to a guardian ad litem volunteer program to act as special advocate for a child under this chapter.

(19) "Guardian ad litem coordinator" means a person or entity receiving moneys from the grant administrator for the purpose of carrying out any of the duties set forth in section 16-1632, Idaho Code.

(20) "Guardian ad litem program" means the program to recruit, train and coordinate volunteer persons to serve as guardians ad litem for abused, neglected or abandoned children.

(21) "Homeless," as used in this chapter, shall mean that the child is without adequate shelter or other living facilities, and the lack of such shelter or other living facilities poses a threat to the health, safety or well-being of the child.

(22) "Law enforcement agency" means a city police department, the prosecuting attorney of any county, state law enforcement officers, or the office of a sheriff of any county.

(23) "Legal custody" means a relationship created by court order, which vests in a custodian the following rights and responsibilities:

(a) To have physical custody and control of the child, and to determine where and with whom the child shall live.

(b) To supply the child with food, clothing, shelter and incidental necessities.

(c) To provide the child with care, education and discipline.

(d) To authorize ordinary medical, dental, psychiatric, psychological, or other remedial care and treatment for the child, including care and treatment in a facility with a program of services for children; and to authorize surgery if the surgery is deemed by two (2) physicians licensed to practice in this state to be necessary for the child.

(e) Where the parents share legal custody, the custodian may be vested with the custody previously held by either or both parents.

(24) "Mental injury" means a substantial impairment in the intellectual or psychological ability of a child to function within a normal range of performance and/or behavior, for short or long terms.

(25) "Neglected" means a child:

(a) Who is without proper parental care and control, or subsistence, ~~education~~, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; ~~provided~~, however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment; shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but ~~further provided~~ this subsection shall not prevent the court from acting pursuant to section 16-1627, Idaho Code; or

(b) Whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child and, as a result of such inability, the child lacks the parental care necessary for his health, safety or well-being; or

(c) Who has been placed for care or adoption in violation of law; or

(d) Who is without proper education because of the failure to comply with section 33-202, Idaho Code.

(26) "Permanency hearing" means a hearing to review, approve, reject or modify the permanency plan of the department, and review reasonable efforts in accomplishing the permanency plan.

(27) "Permanency plan" means a plan for a continuous residence and maintenance of nurturing relationships during the child's minority.

(28) "Protective order" means an order created by the court granting relief as delineated in section 39-6306, Idaho Code, and shall be for a period not to exceed three (3) months unless otherwise stated herein. Failure to comply with the order shall be a misdemeanor.

(29) "Protective supervision" means a legal status created by court order in neglect and abuse cases whereby the child is permitted to remain in his home under supervision by the department.

(30) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parents after the transfer of legal custody including, but not necessarily limited to, the right of visitation, the right to consent to adoption, the right to determine

religious affiliation, the right to family counseling when beneficial, and the responsibility for support.

(31) "Shelter care" means places designated by the department for temporary care of children pending court disposition or placement.

(32) "Supportive services," as used in this chapter, shall mean services which assist parents with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations or assistance with effectively using adaptive equipment and accommodations which allow parents with a disability to benefit from other services including, but not limited to, Braille texts or sign language interpreters.

SECTION 2. That Section 33-202, Idaho Code, be, and the same is hereby amended to read as follows:

33-202. SCHOOL ATTENDANCE COMPULSORY. The parent or guardian of any child resident in this state who has attained the age of seven (7) years at the time of the commencement of school in his district, but not the age of sixteen (16) years, shall cause the child to be instructed in subjects commonly and usually taught in the public schools of the state of Idaho. ~~Unless the child is otherwise comparably instructed, the parent or guardian shall cause the child to attend a public~~ To accomplish this, a parent or guardian shall either cause the child to be privately instructed by, or at the direction of, his parent or guardian; or enrolled in a public school or public charter school, including an on-line or virtual charter school or private or parochial school during a period in each year equal to that in which the public schools are in session; there to conform to the attendance policies and regulations established by the board of trustees, or other governing body, operating the school attended.

SECTION 3. That Section 33-207, Idaho Code, be, and the same is hereby amended to read as follows:

33-207. PROCEEDINGS AGAINST PARENTS OR GUARDIANS. (1) Whenever the parents or guardians of any child between the ages of seven (7) years, as qualified in section 33-202, Idaho Code, and sixteen (16) years, have failed, neglected or refused to place the child in school as provided in this chapter or to have the child privately instructed at home by his parent or guardian or to have the child ~~comparably~~ instructed as defined in section 33-202, Idaho Code, or knowingly have allowed a pupil to become an habitual truant, proceedings shall be brought against such parent or guardian under the provisions of the juvenile corrections act or as otherwise provided in subsection (2) of this section.

(2) Whenever it is determined by the board of trustees of any school district that a child enrolled in public school is an habitual truant, as defined in section 33-206, Idaho Code, an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the child's residence. Proceedings may be brought directly against any parent or guardian of a public school pupil who is found to have knowingly allowed such pupil to become an habitual truant, and such parent or guardian shall be guilty of a misdemeanor.

(3) Whenever it is determined by the board under provisions providing due process of law for the student and his or her parents that the parents or guardians of any child not enrolled in a public school are failing to meet the requirements of section 33-202, Idaho Code, an

1 authorized representative of the board shall notify in writing the prosecuting attorney in the
2 county of the pupil's residence and recommend that a petition shall be filed in the magistrates
3 division of the district court of the county of the pupil's residence, in such form as the court
4 may require under the provisions of section 20-510, Idaho Code.